


**MEMORANDUM**

October 8, 2013

TO: Health and Human Services Committee  
Government Operations and Fiscal Policy Committee

FROM: Linda McMillan, Senior Legislative Analyst   
Justina Ferber, Legislative Analyst

SUBJECT: **Property Disposition – Lease of Space in New Silver Spring Library to Pyramid Atlantic**

At this session, the joint Committee will discuss the summary of the material terms to lease space in the new Silver Spring Library to Pyramid Atlantic which were transmitted to the Council on October 7, 2013 (©1-5). Under the Property Disposition process, the Council has 30 days to provide comments on the material terms. The Council will also have to approve a Declaration of No Further Need before the actual disposition takes place. The Executive indicates (©5) that he intends to send a Declaration to the Council within 15 days of receiving the Council's comments on the material terms.

The approved CIP project for the new Silver Spring Library says, "This project provides for the design and construction of a mixed use facility at Wayne Avenue and Fenton Street which includes a new modern 38,200 net square foot (up to 58,000 GSF) library, designed to better serve its demographically and ethnically diverse residents, and its growing business community; as well as 20,000 square feet of art gallery, classroom space and a coffee bar..." The Council has previously discussed that the Executive awarded the arts space to Pyramid Atlantic in response to a 2008 solicitation for proposals.

The proposed lease is for approximately 15,500 square feet of net useable space. The Executive has estimated the annual value of the leased space to be \$421,000 based on the approximate value of comparable leasing options (©3). The initial term of the lease is for five years. There are three additional five year renewals, so the lease could be in place for up to 20 years.

## **Council Staff Questions and Responses**

Attached at ©6-8 are questions asked by Council staff based on a draft of the material terms and the responses provided by the Chief Administrative Officer.

In general, Council staff's questions were concerns about (1) whether the County has the same ability to terminate the lease at each 5 year renewal as Pyramid Atlantic does; (2) will there be reporting on the actual use/attendance for programming by Pyramid Atlantic (not just a requirement that programs be provided), and (3) should any percentage of the artist-in-residence, internships, or gallery exhibit be reserved for County residents (as this is County-funded space)?

The responses indicate that the County has the right to terminate the lease at the expiration of any five year term.

With regard to a report on usage, the response again notes that the County will review the annual operating budget and can make recommendations on community programs, but this is not the same as specifically requiring a report on usage and attendance from the previous year, which Council staff believes is important.

The responses also indicate that there are no other requirements for the internships, artists-in-residence, or galleries other than the number required (20 internships, 8 artists-in-residence, and 12 exhibitions with at least a total of 100 artists.) Recognizing that Pyramid Atlantic is a vital member of the Montgomery County arts community and involves many Montgomery County residents, Council staff still suggests the joint Committee discuss whether there should be some specific minimum expectation that Montgomery County artists will be involved in these opportunities.

Council staff also notes that with regard to the required workshops (©7), the response says, "the Library Staff believe they have flexibility to negotiate or adjust the terms related to the workshops..." If this belief is correct, perhaps the language in the lease should be clarified.



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

October 7, 2013

TO: Nancy Navarro, President  
County Council

FROM: Isiah Leggett  
County Executive

SUBJECT: Material terms of Pyramid Atlantic Lease Agreement

This memorandum seeks comments from Council relevant to the proposed disposition of a portion of the Silver Spring Library that is intended to be occupied by an arts service provider. This submission is in accordance with the provisions of Montgomery County Code, 11B-45 titled Disposition of Real Property. Section 11B.45(d) provides for Council comment before the Executive seeks County Council approval of a declaration of no further need. It states in part: "...the County Executive must submit to the Council and allow the Council at least 30 days to comment on: (1) all material terms of the disposition, including the price or rent to be paid and any associated economic incentives; and (2) any appraisal that the Executive relied on or will rely on in setting the property's market value."

History

In December 2008, the Department of General Services (hereafter DGS) and the Silver Spring Regional Center issued a solicitation for proposals from qualified non-profit arts organizations to be included in a mixed use project on the site currently designated for development as the new Silver Spring Library to be located on Fenton Street between Wayne Avenue and Bonifant Street in downtown Silver Spring. The goals and objectives included:

- To enhance and strengthen the arts in Silver Spring by providing a cultural destination space in the Central Business District.
- Contribute to the mission of the Montgomery Public Libraries by creating a synergy that enhances both the arts and the enjoyment and use of the Silver Spring Library.

- Provide cultural and educational opportunities to the residents of Montgomery County and enhance the quality of life in the County.
- Enhance the understanding and love of the arts and increase participation in the arts by residents of Montgomery County.
- Contribute to the development of the arts and artistic opportunities in Montgomery County by making available public space for studios, exhibitions, education, and/or development of artistic skills and creativity.

Pyramid Atlantic, Inc., a local non-profit arts organization that has programs for paper making, printing, and book binding as an art form, met the County's objectives and was selected for the Library project in March 2009. The County and Pyramid Atlantic, Inc. have negotiated acceptable terms and conditions and now desire to enter into a lease agreement. In addition the Silver Spring Library development is in final stages for commencement of construction and the arts facility needs to be ready to build out in a timely manner so that completion of the arts facilities will be coordinated with completion of the library facilities.

#### Material Terms

This represents a summary of the material terms of the lease agreement that have been negotiated and approved for finalization by the Executive Branch.

- The County is responsible for constructing the base building.
- Pyramid Atlantic, Inc. is responsible for all costs associated with the tenant build-out including design, permitting and construction of all fit-out, interior finishes, furniture, fixtures and equipment associated with its use of the premises.
- The "Leased Premises" as shown in Exhibit B, shall be approximately 15,500 square feet of net useable space within the Silver Spring Library Complex.
- The County will cause the base building to be designed and constructed to meet LEED Silver requirements. Pyramid Atlantic, Inc. shall cause the tenant build-out of the Leased Premises to be designed and constructed to meet LEED Silver requirements.
- The Lease will be for an initial term of five (5) years. Pyramid Atlantic, Inc. will have the right to renew this Lease for three (3) additional five (5) year terms.
- The County will have the right to terminate the Lease at the expiration of the initial five (5) year term of the Lease should it be determined that the premises are needed for any other public purpose or to replace Pyramid Atlantic with another arts related organization if Pyramid Atlantic is not in full compliance with the

lease terms. The County will pay a termination fee equivalent to the unamortized cost of the tenant build-out.

- Pyramid Atlantic, Inc. will be permitted to use the Leased Premises for various business uses and other uses which would be customary for an arts-oriented studio, office, gallery and theater venue.
- In lieu of payment of rent, Pyramid Atlantic, Inc. will provide certain Services and Community Programs at its sole cost. All such programming shall be provided within and on the Leased Premises unless otherwise agreed in writing by the County and shall comply with all Montgomery County Department of Public Libraries' policies, rules, and regulations as may be in effect from time-to-time.
- This is a triple net lease. Pyramid Atlantic, Inc. will be responsible for utilities, all bills and expenses, taxes assessed by government agencies, and all maintenance, associated with its use of the Leased Premises.
- Pyramid Atlantic, Inc. will submit its annual operating budget to the County at least ninety (90) days prior to the commencement date and each anniversary of the commencement date during the term of this Lease, and Pyramid Atlantic shall allow the County to make recommendations each year of the Lease term to the operating budget as it relates to the provision of Services and Community Programs under the Lease.
- Pyramid Atlantic, Inc. will carry commercial general liability insurance and will properly indemnify the County in association with its use of the Leased Premises.
- Pyramid Atlantic, Inc. will have the right to sublease space within the Leased Premises to other arts development organizations and the County has the right to approve the subleases.

The terms and conditions of the Lease are considered fair to both the County and Pyramid Atlantic, Inc. DGS has estimated the value of the Leased Premises at approximately \$421,000 per annum. The value of the Leased Premises was determined by combining the rental value of the various components (storage, retail, office) into one number. DGS used an independent real estate service called CoStar for comparables and their knowledge of the leasing market to come up with the Library square footage price numbers that are broken down as follows:

Basement (Storage, Studios)	\$17 per Square Foot	\$ 50,490
1 <sup>st</sup> Floor (Gallery/Workshop)	\$30 per Square Foot	\$117,900
2 <sup>nd</sup> Floor (Administrative)	\$28 per Square Foot	<u>\$252,644</u>
Total (Rounded)		\$421,000

The Leased Premises will contribute to the overall strategy for the redevelopment of Silver Spring. As you will recall, the Silver Spring Library PDF, previously approved by the County Council, calls for a portion of the building to be dedicated to an arts use. Executive Staff was not asked to take this property through the reuse analysis process that would otherwise be required by the Disposition Regulations because the allocation of this portion of the Silver Spring Library has been previously approved by Council for use as an arts facility. To that extent, the analysis has already been performed to determine the preferred use of this premises is as an arts facility.

Although difficult to quantify the dollar value of the Services and Community Programs, the Department of Libraries, Silver Spring Regional Center and DGS have carefully reviewed the level of Services and Community Programs, and determined them to be a fair exchange of in-kind services for rent of the facility. Services provided in the lease agreement consist of the following:

- Twenty-Eight (28) workshops for youth and adults (year round – beginning in October and ending September 30th) – with the capacity to serve at least one thousand (1,000) youths and adults annually.
- Twenty (20) internships – on a semester basis with five (5) in the Fall, five (5) in the Winter, five (5) in the Spring, and five (5) in the Summer – with the capacity to serve a minimum of twenty (20) students annually.
- Outreach classes at Montgomery County Schools (year round – beginning in October and ending September 30th) – with the capacity to serve a minimum of five hundred (500) students annually.
- Outreach classes at a minimum of eight (8) community organizations selected by Tenant, in its sole discretion (year round – beginning in October and ending September 30th) – with the capacity to serve a minimum of two hundred and fifty (250) youths and adults annually.
- Eight (8) free artist lectures: two (2) in the Fall, two (2) in the Winter, two (2) in the Spring, and two (2) in the Summer – provided by eight (8) separate artists with a target audience of eighty (80) invitees to each artist lecture.
- Twelve (12) exhibitions (One (1) per month beginning in September) – featuring the work of at least one hundred (100) separate artists with a target audience of four hundred (400) persons per exhibition.
- Eight (8) artist residencies: two (2) in the Fall, two (2) in the Winter, two (2) in the Spring, and two (2) in the Summer.

Nancy Navarro, President  
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- Although difficult to estimate the economic value it will contribute to the establishment of Silver Spring as an arts oriented and supported community.

#### Next Steps

Once Council has completed its thirty (30) day review of these material terms Executive Staff will review any comments received and negotiate any necessary changes with Pyramid Atlantic. Within fifteen (15) days after Council completes its review of these terms I will send over the declaration of no further need for Council consideration and hopeful approval by resolution.

IL:rpb

cc: David Dise, Director, Department of General Services  
Parker Hamilton, Director, Department of Public Libraries  
Reemberto Rodriguez, Director, Silver Spring Regional Center



OFFICES OF THE COUNTY EXECUTIVE


Isiah Leggett  
County Executive

Timothy L. Firestine  
Chief Administrative Officer

MEMORANDUM

October 7, 2013

**TO:** Linda McMillian  
Senior Legislative Analyst

**FROM:** Ramona Bell-Pearson   
Assistant Chief Administrative Officer

**SUBJECT:** Pyramid Atlantic Lease Terms

Attached you will find the material terms related to the Pyramid Atlantic Lease Agreement that the County has negotiated for the lease of space in what will be the new Silver Spring library.

During our discussions about the draft material terms you raised some questions that I have attempted to answer below. These responses were drafted in consultation with John Fisher as the County Attorney who assisted Library Staff, Department of General Services Staff (DGS) and me in negotiating this agreement.

**Questions**

**Question:** The terms for renewal and termination seem pretty limiting to the County. Pyramid Atlantic has a total of 20 years, but the County can only terminate after the initial five years if it needs the space for another public purpose. Is there a reason why this is not allowed at each renewal?

**Answer:** The County has the right to terminate the lease as of the expiration of any current term of the lease i.e. at the end of each five year lease term (sec. 3.B.)

**Question:** The phrase "if Pyramid Atlantic is not in full compliance with the lease terms" also seems overly limiting to the County. For example, what happens

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**if Pyramid Atlantic provides the 28 workshops with a capacity to serve at least 1,000 but consistently has very low attendance? It is not clear that the County could consider this type of poor performance. Could this phrase be taken out or amended to give the County more flexibility?**

Answer: The full compliance only applies if the County is replacing Pyramid Atlantic with another arts-related organization and even then the burden of proof is on Pyramid Atlantic to demonstrate that the County in replacing Pyramid Atlantic with another arts organization acted arbitrarily and capriciously. (Sec. 3.B). Additionally, the Library Staff believe they have flexibility to negotiate or adjust the terms related to work shops. The overall language of the Agreement requires Pyramid Atlantic to meet the needs and programming demands set forth by the Library. They have to be a complimentary partner in programming

**Question: Following up on this, there should be a requirement for a yearly report on actual usage not just the programming that will be provided.**

Answer: As to yearly reports they can be provided and there is nothing in the lease that would prevent Library Staff from requiring them. The lease; however, already provides for the County's annual review of Pyramid Atlantic's operating budget and allows the County each year to make recommendations as to the provision of Services and Community Programs under the lease (Sec. 11)

**Question: Pyramid Atlantic has the right to sublease and the County has the right to approve the subleases. Is the County going to approve the subleases or is it just reserving the right? Is the County placing any limits on the rent that Pyramid Atlantic can charge (such as using the same basis as the County is using for valuing the lease)?**

Answer: Subleasing by Pyramid Atlantic is divided into two types. The first is subleases to Arts Organizations which may be subleased without County consent provided they meet the requirements of section 17 A. of the lease which includes, *inter alia*, a requirement for a "cost neutral" sub-rental rate (sec. 17.A). The second is subleases other than to Arts Organizations, which must each be approved by the County (sec. 17 .B. 1 &2) and as to which the County may withhold its consent if in the County's sole discretion the County determines that the sublease will have a negative impact on the Property, the Silver Spring Library Complex, the Base Building, the Leased Premises, the Services or Community Programs or on the surrounding neighborhood.(sec. 17.B.)

**Question: Are the internships limited to Montgomery County residents? Are the artists in residence (or some percentage of them) reserved for Montgomery County residents?**

Answer: Section 4.A. allows for resident artists and section 4.B. and exhibit J addresses the artist use of the licensed space by the artists. Other than these requirements on the artist only the number of artists is specified by section 5.B.7. As to the internships only the number of

internships is specified by section 5.B.2. There are no other requirements in the lease otherwise pertaining to artists in residence or internships.

**Question: Is some percentage of the at least 100 artists that will exhibit reserved for Montgomery County residents? (There are obviously benefits to bringing in non-local artists for residencies and exhibits but since it is County funded space it seems like there should be some portion reserved for County residents).**

Answer: While there are no lease provisions that speak specifically to the selection process or require a preference for local artists that are from Montgomery County, the Library has flexibility. The lease gives the Library authority to make suggestions to Pyramid Atlantic that will provide for programming to compliment the library programs. The Library Director is willing to have that discussion about inclusion of local artists with Pyramid Atlantic.